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12 Attorneys for Creditor
13 CHURCH OF SCIENTOLOGY INTERNATIONAL

14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16	In re	)	CASE NO. 95-10911 aj
17)	
18		)	CHURCH OF SCIENTOLOGY
19		)	INTERNATIONAL'S MEMORANDUM
20		)	OF POINTS AND AUTHORITIES IN
21		)	SUPPORT OF EMERGENCY MOTION
22		)	TO SEAL VOLUMES I AND VI OF
23		)	GERALD ARMSTRONG'S EVIDENCE
24	GERALD ARMSTRONG,	)	IN SUPPORT OF MOTION FOR
25		)	RELIEF FROM STAY
26)	
27)	
28	Debtor	)	DATE: May 18, 1995
		)	TIME: 9:00 a.m.
		)	CTRM: Hon. Alan Jaroslovsky
)	

1 This memorandum of points and authorities is submitted in
2 support of creditor Church of Scientology International's ("the
3 Church") emergency motion to seal volumes I and VI of the evidence
4 filed by debtor Gerald Armstrong ("Armstrong") in opposition to the
5 Church's pending motion for relief from stay.

6 On May 15, 1995, Armstrong filed two declarations and seven
7 volumes of what he termed "Evidence in Support of Opposition to
8 Scientology's (sic) Motion for Relief From Stay." This "evidence"
9 has nothing to do with the issues presented by the Church's motion
10 for relief, which is a straightforward motion asking the Court to
11 permit the Church to conclude the state court action against
12 Armstrong, which was set to go to trial today.

13 The voluminous offering filed by Armstrong is not accompanied
14 by any memorandum in opposition to the Church's motion, and
15 Armstrong admits, by declaration, that he has no legal argument to
16 make in opposition to the motion. The papers filed by Armstrong
17 appear to be a simple attempt to convince the Court that the Church
18 is "bad," that Armstrong is a Christian, and that the Court should
19 therefore act simply to be merciful to Armstrong, ignoring the law.
20 Neither the declarations nor any of the volumes of exhibits offer
21 any evidence which is probative of the pending motion.

22 Volume VI of the evidence includes, as Exhibit 7, a
23 declaration of Armstrong and accompanying exhibits which were first
24 filed by Armstrong in the Marin Superior Court on January 19, 1995.
25 Exhibits A and M to that declaration consist of altered or re-
26 created versions of highly sacred confidential scriptures which are
27 always maintained confidential as a matter of Church doctrine and
28 belief. [Bartilson Dec., ¶ 2.] Further, these materials are

1 confidential trade secrets belonging to the Church, which
2 California Civil Code § 3426.5 provides shall be protected by such
3 measures as sealing the files.

4 On the Church's immediate ex parte application, the Superior
5 Court moved the documents at issue into chambers and kept them
6 sealed from public view until the Church could bring a motion to
7 strike. [Bartilson Dec., ¶ 3.]

8 On January 23, 1995, the Church moved to strike the
9 declaration which appears as Exhibit 7 in Volume VI herein, or, in
10 the alternative, for an order sealing Exhibits A and M thereto.
11 A true and correct copy of the moving papers filed in support of
12 that motion is attached to the accompanying Declaration of Laurie
13 J. Bartilson as Exhibit A. On January 28, 1995, the Honorable Gary
14 W. Thomas ordered the materials stricken from the Court files, and
15 required Armstrong to pay the Church \$700 in sanctions for his bad-
16 faith filing. A true and correct copy of the Court's ruling is
17 attached to Ms. Bartilson's declaration as Exhibit B. Thereafter,
18 the Court instructed his clerk to shred the declaration and its
19 exhibits, and Ms. Bartilson confirmed that the clerk had done so.
20 [Bartilson Dec., ¶ 4.]

21 Included in Volume I of Armstrong's evidence are declarations
22 of Hana Whitfield, Dennis Erlich and Keith Scott. Attached as
23 exhibits to each of these declarations are copies of additional
24 confidential and protected Church scripture. In addition, Ms.
25 Whitfield's declaration contains a lengthy discussion of some of
26 the protected materials.

27 Under California law, protection of trade secrets, or even
28 matters alleged to be trade secrets, is a substantive right:

1 [A] court shall preserve the secrecy of an
2 alleged trade secret by reasonable means, which may
3 include granting protective orders in connection with
4 discovery proceedings, holding in-camera hearings,
5 sealing the records of the action, and ordering any
6 person involved in the litigation not to disclose an
7 alleged trade secret without prior court approval.

8 California Civil Code § 3426.5 (emphasis supplied).

9 Armstrong has filed the confidential materials in this
10 Court's public files solely to harass the Church. He is well aware
11 of the Church's interest in the documents as trade secrets.
12 Indeed, the materials in question have been judicially recognized
13 as trade secrets under Civil Code § 3426.1 in Bridge Publications
14 Inc. v. Vien (S.D.Cal. 1993) 827 F.Supp. 629 at 633, citing
15 Religious Technology Center v. Scott (9th Cir. 1989) 869 F.2d 1306,
16 1309-10 (holding that the Advanced Technology can be protectable as
17 a trade secret).¹ The documents in Volumes I and VI are re-
18 creations of portions of Advanced Technology which the Vien court
19 has already adjudicated to be trade secrets as a matter of law.

20 Armstrong's interjections of these materials into the Court's
21 files is objectionable not merely because they are trade secrets,
22 but also because a church has a generalized interest in maintaining
23 confidentiality of internal documents both for itself and its
24 parishioners. U.S. v. Hubbard (D.C.Cir. 1980) 650 F.2d 293, 306-
25 07. The documents in Volumes I and VI are not the subject of this

26 ¹ In Vien, the Court granted summary judgment for trade secret
27 misappropriation, finding these confidential scriptures to be trade
28 secrets as a matter of law. Id. at 633. The Vien court
specifically recognized that the confidentiality and security
requirements of Civil Code § 3426.1 had been met with respect to
the Advanced Technology, and that it had independent economic
value. 827 F.Supp. at 633, quoting Murdock v. Commonwealth of
Pennsylvania (1943) 319 U.S. 105, 111, 63 S.Ct. 870, 874, 87 L.Ed.
1292; Cal. Civ. Code § 3426.1(d).

1 litigation. Armstrong obviously has filed these documents
2 intentionally only because he knows it will upset plaintiff's
3 parishioners and staff.

4 The United States Supreme Court has long recognized as an
5 "uncontested proposition" that "the right to inspect and copy
6 judicial records is not absolute," that "every court has
7 supervisory powers over its own records and files..." and that pre-
8 trial denial of access to judicial records may be appropriate in a
9 variety of situations. Nixon v. Warner Communications, Inc., 435
10 U.S. 589, 598, 98 S.Ct. 1306, 1312, 55 L.Ed.2d 570, (1978).
11 Seattle Times v. Rhinehart, 467 U.S. 20, 104 S.Ct. 2199, 81 L.Ed.2d
12 17 (1984) also confirms the proposition: "...to the extent that
13 courthouse records could serve as a source of public information,
14 access to that source customarily is subject to the control of the
15 trial court." 467 U.S. 33, n. 19, 104 S.Ct. at 2207, n. 19. The
16 trial court granted a confidentiality order in favor of plaintiff,
17 a religious organization. In affirming, the Supreme Court
18 recognized that plaintiff "had a recognizable privacy interest" and
19 that revelation of material would "understandably result in
20 annoyance, embarrassment and even oppression" not only to the
21 religion itself, but to its members. Id. at page 28, 2205. See
22 also, Matter of Sealed Affidavit(s) to Search Warrants, 600 F.2d
23 1256, 1257 (9th Cir. 1979) (authority to deny access extends to
24 sealing affidavits to protect confidential matters).

25 Further, the declarations and seven volumes of evidence were
26 not properly served on the Church's counsel. On May 17, 1995, the
27 Church's Los Angeles lawyers received, by U.S. mail, six of the
28 seven volumes of evidence. In addition, after prompting by

1 Church's counsel, Armstrong provided the Church's San Francisco
2 attorneys with two declarations, signed by him, which he apparently
3 also filed with this court. Neither of the lawfirms have yet
4 received Volume I of the evidence; its existence in the court
5 files, and content, was ascertained only by a visit to the clerk's
6 office.

7 The Church is preparing a motion to strike all of this
8 inapplicable material, and for sanctions. While that motion is
9 pending, protection is required of the materials, so that the
10 Church's confidential trade secrets are not a part of the public
11 record and available for public viewing. Accordingly, the Church
12 moves this Court for emergency relief, and asks that the
13 accompanying proposed order be entered immediately.

14 Dated: May 18, 1995

Respectfully submitted,

15 Andrew H. Wilson
16 WILSON, RYAN & CAMPILONGO

17 MOXON & BARTILSON

18 By: Laurie J. Bartilson
19 Laurie J. Bartilson

20 Attorneys for Plaintiff
21 CHURCH OF SCIENTOLOGY INTERNATIONAL
22
23
24
25
26
27
28

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On May 18, 1995, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF EMERGENCY MOTION TO SEAL VOLUMES I AND VI OF GERALD ARMSTRONG'S EVIDENCE IN SUPPORT OF MOTION FOR RELIEF FROM STAY on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

GERALD ARMSTRONG
715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

[X] BY FAX AND MAIL

Jeffrey G. Locke, Trustee
P.O. Box 488
Kentfield, CA 94914-0488

[X] BY MAIL

[] *I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal

cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.

Executed on May 18, 1995, at Los Angeles, California.

[] **(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on _____, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Abel E. Lemura
Print or Type Name

Abel E. Lemura
Signature

* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

** (For personal service signature must be that of messenger)

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3 115 Sansome Street
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12 Attorneys for Creditor
13 CHURCH OF SCIENTOLOGY INTERNATIONAL

14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re

17 GERALD ARMSTRONG,

18 Debtor

19) CASE NO. 95-10911 aj
20)
21) ORDER ON CHURCH OF
22) SCIENTOLOGY INTERNATIONAL'S
23) EMERGENCY MOTION TO SEAL
24) EXHIBITS
25)
26) [PROPOSED]
27)
28)
DATE: May 18, 1995
TIME: 9:00 a.m.
CTRM: Hon. Alan
Jaroslovsky

1 The emergency Motion of the Church of Scientology
2 International to seal exhibits pending hearing on motion to strike
3 was considered this 18th day of May, 1995, and good cause appearing
4 therefore,

5 IT IS HEREBY ORDERED that said motion is GRANTED. Volumes I
6 and VI of the evidence filed by debtor Gerald Armstrong shall be
7 and is SEALED from public viewing. The Church of Scientology
8 International's motion to strike, currently under preparation, will
9 be heard by this Court on May 25, 1995.

10
11 Dated: _____

Honorable Alan Jaroslovsky
Bankruptcy Court Judge

PROOF OF SERVICE

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On May 18, 1995, I served the foregoing document described as ORDER ON CHURCH OF SCIENTOLOGY INTERNATIONAL'S EMERGENCY MOTION TO SEAL EXHIBITS on interested parties in this action,

[] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [] the original [X] true copies thereof in sealed envelopes addressed as follows:

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715 Sir Francis Drake Blvd.
San Anselmo, CA 94960-1949

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